

Appl. No. 10/527,737

Art Unit: 1655

Response dated January 26, 2007

Reply to Office action of December 26, 2006

REMARKS

Claims 12-30 are pending in the present application. Claim 31 has been added and Claims 22 and 30 are amended.

1. Restriction Requirement

According to the Office, Restriction is required under 35 U.S.C. 121 and 372 among the claims based on the following Groups:

- 1) Claims 12-24, drawn to a method of applying a cosmetic preparation; and
- 2) Claims 25-30, drawn to the cosmetic preparation.

According to the Office, Restriction is proper because "The inventions listed as Groups I and II do not relate to a single inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: Tomer et al. teaches centella asiatica can be ingested for inflammation uses (US 6274176 B1)."

In compliance with the Requirement, Applicants provisionally elect Claims 25-30 (Group II) for prosecution on the merits. The Requirement, itself, is traversed for the following reasons.

Under 37 CFR Rule 1.475(b), which rule applies to the present application:

"An international or a national stage application containing claims to different categories of invention **will be considered to have unity of invention** if the claims are drawn only to one of the following combinations of categories:

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- (1) A product and a process specially adapted for the manufacture of said product; or
- (2) A product and process of use of said product; or**
- (3) A product, a process specially adapted for the manufacture of the said product, and a use of the said product; or
- (4) A process and an apparatus or means specifically designed for carrying out the said process; or
- (5) A product, a process specially adapted for the manufacture of the said product, and an apparatus or means specifically designed for carrying out the said process (emphasis supplied)."

Claims 25-30 are directed to a cosmetic preparation and Claims 12-24 are directed to a method of using the cosmetic preparation. Thus, Claims 25-30 and Claims 12-24 are drawn to the combination of 37 CFR 1.475(b)(2) to "a product and process of use of said product."

The "special technical feature" of the claims of the present application is that the claimed cosmetic preparation and the method of application of the cosmetic preparation effect a modulation of one or more dermal/epidermal junction components of the skin.

Under the applicable Law then, the claims of the present application are **and must** be considered by the Patent Office to have unity of invention. To hold otherwise, would be in noncompliance with the Law, as described above in detail.

2. Election of Species

According to the Examiner, "This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT

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Rule 13.1. The species are as follows:

Applicant must elect a species of plant for Claims 14, 17, 22, 27, 29, and 30.

Applicant must elect an additional component for Claims 15, 18, 19, 23, and 28."

The Requirement is traversed for the same reasons as above. In compliance with Rule 13.1 and 37 CFR 1.475(a), it is submitted that the species have the same "special technical feature" of effecting a modulation of one or more dermal/epidermal junction components of the skin, in the same manner as discussed above with respect to the Restriction Requirement.

In compliance with 37 CFR 1.146, Applicants provisionally elect the following species of the claims:

- 1) for Claims 14, 17, 22, 27, 29, 30 and newly added 31, Applicants elect *Hibiscus esculentus*;
- 2) for Claims 15, 18, 19, 23, and 28, Applicants elect ammonium glycyrrhizate.

The species of *Hibiscus esculentus* reads on Claims 12, 13, 14, 16, 17, 20, 21, 22, 24, 25, 26, 27, 29, 30, and newly added 31.


The species of ammonium glycyrrhizate reads on Claims 12, 15, 16, 18, 19, 20, 21, 22, 23, 25, and 28.

For the reasons discussed above, the Examiner is kindly solicited to reconsider and withdraw the Restriction and Election of Species Requirements, since Applicants have demonstrated support in the Law for unity of invention and the special technical feature encompassed by all of the claims of the present application.

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Favorable reconsideration and an early action on the merits are respectfully solicited.

Respectfully submitted,


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